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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/829,403	04/20/2004	Marco Tartagni	870893-5	5957
23879	7590	03/25/2005	EXAMINER	
BRIAN M BERLINER, ESQ O'MELVENY & MYERS, LLP 400 SOUTH HOPE STREET LOS ANGELES, CA 90071-2899			NGUYEN, VINCENT Q	
			ART UNIT	PAPER NUMBER
			2858	

DATE MAILED: 03/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No.	Applicant(s)	
	10/829,403	TARTAGNI, MARCO	
	Examiner	Art Unit	
	Vincent Q. Nguyen	2858	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 14-41 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 14, 15, 18-28, 31, 32, 34, 40 and 41 is/are rejected.
- 7) ☒ Claim(s) 16, 17, 29, 30, 33 and 35-39 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 14, 15, 20 and 40 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2, of U.S. Patent No. 6,437,583. Although the conflicting claims are not identical, they are not patentably distinct from each other because they claim the same subject matter.

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Regarding claims 14, 20, 40, the limitations such as first and second capacitor plates and amplifier are in fact the same elements claimed in claim 1 (Patent 6,437,583).

Claim 15 is identical to that of claim 2.

Specification

3. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

4. The abstract of the disclosure is objected to because it contains legal phraseology "comprising" (e.g. line 4). Correction is required. See MPEP § 608.01(b).

Objection

5. Claim 34, recites the limitation "the second transistor" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 14, 15, 18-28, 31, 32, 34, 40, 41 are rejected under 35 U.S.C. 102(b) as being anticipated by Kalnitsky et al. (6,011,859).

Regarding claims 14, 20-23, 26, 40, 41, Kalnitsky et al. discloses a device comprising (figure 2) a first capacitor plate (24) positioned adjacent the object (18) to form a first capacitance between the first plate and the object, a second capacitor plate (23) positioned adjacent the object (18) to form a second capacitance between the second plate and the object, the second plate (23) being coplanar with the first plate (24), and an amplifier (13) having an input (16) and an output (17), the input (16) being connected to the first plate (24) and connectable to a voltage source (V_R) (In fact any amplifier is "connectable" to a voltage source to receive power), and the output (17) being connected to the second plate (23) to form a negative feedback branch that includes the first and second capacitor plates and the object.

Regarding claims 15, 24, Kalnitsky et al. discloses a layer of insulating material contacting outer surfaces of the first and second plate, such that the insulating material is positioned between the plates and the object (Column 2, lines 24-28).

Regarding claims 18, 27, Kalnitsky et al. discloses the first and second capacitor plates (23, 24) and amplifier (13) comprise a first cell (2) of an array of substantially identical cells integrated on a single semiconductor chip (Figure 1).

Regarding claims 19, 25, Kalnitsky et al. discloses a switching element (19) connected between said input and said output of said amplifier to selectively couple the input to the output.

Regarding claims 28, 31, 32, 34, Kalnitsky et al. discloses a device comprising an input voltage source for providing a step voltage (Column 7, lines 53-55), a plurality of output lines (figure 1), and an array of distance detecting cells selectively connected to the input voltage source and to the output lines, each cell (2) including a capacitive distance sensor which includes: a first plate (24) positioned in proximity to an object to form a first capacitance between the first plate and the object, a second plate (23) positioned in proximity to the object to form a second capacitance between the second plate and the object, the second plate being coplanar with the first plate, and an amplifier (13) having an input and an output, the input being connected to the input voltage source and to the first plate and the output being connected to the second plate to form a negative feedback branch that includes the first and second capacitances to establish an output voltage at the amplifier output in response to the step voltage of the

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input voltage source, the output voltage being proportional to a distance between the first plate and the object (Column 7, lines 57-60).

Allowable Subject Matter

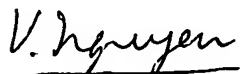
8. Claims 16, 17, 29, 30, 33, 35-39 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Contact Information

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vincent Q. Nguyen whose telephone number is (571) 272-2234. The examiner can normally be reached on 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eddie Lefkowitz can be reached on (571) 272-2180. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



March 19, 2005

Vincent Q. Nguyen
Primary Examiner
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